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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,397	10/16/2001	Daniel Schubart	AXM-004.1 US	6812

7590 03/11/2003

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EXAMINER

SALIMI, ALI REZA 13

ART UNIT PAPER NUMBER

1648

DATE MAILED: 03/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/981,397

Applicant(s)
Schubart et al

Examiner
A. R. SALMI

Art Unit
1648



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE One MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/8/02, 7/23/02, 6/28/02.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-28 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other: |

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DETAILED ACTION

The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1648.

Response to Amendment

The receipt of preliminary amendments of 4/19/02, and 6/28/02 are acknowledged. Claims 1-28 are pending in the application.

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 20, 21, drawn to method of identifying compounds useful for cytomegalovirus and solid support useful for screening the compounds, classified in class 435, subclass 7.1. (1st method and compound) **(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- II. Claims 2, 18, 25, drawn to method of detecting cytomegalovirus infection in individual and a solid support for detecting cytomegalovirus in individual, classified in class 435, subclass 5. (2nd method and compound) **(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)**

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- III. Claims 3, 19, 25, drawn to method of detecting cytomegalovirus in cell lysates and a solid support for detecting cytomegalovirus in cells, classified in class 435, subclass 7.2. (3rd method and compound) **(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- IV. Claim 4-8, drawn to monoclonal or polyclonal antibodies and method of preventing, regulating the production of cytomegalovirus utilizing antibodies, classified in class 424, subclass 130.1. (4th method and compound) **(Please note if this group is selected further select one kinase or one antibody to a specific kinase to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- V. Claims 5-7, 13, 14, 15, drawn to method for preventing, and regulating the production or expression of cytomegalovirus utilizing oligonucleotide as inhibitors, classified in class 435, subclass 91.1. (5th method) **(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- VI. Claims 9-11, 16-17, 25, drawn to method of preventing, regulating the expression or production of cytomegalovirus in individuals or cells utilizing an activator, classified in class 435, subclass 6. (6th method) **(Please note if this group is**

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selected further select one activator to be examined on the merits, and amend the claims accordingly, see below for explanation)

- VII. Claim 12, drawn to oligonucleotide(s) that bind to the DNA or RNA, classified in class 424, subclass 230.1. (5th compound) **(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- VIII. Claim 22, drawn to composition useful to treat cytomegalovirus via inhibitors, classified in class 536, subclass 24.5. (6th compound) **(Please note if this group is selected further select one inhibitor to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- IX. Claim 23, drawn to composition useful to treat cytomegalovirus utilizing activators, classified in class 530, subclass 300. (7th compound) **(Please note if this group is selected further select one activator to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- X. Claims 24, 26-28, drawn to composition to treat cytomegalovirus with compounds, and use of the compounds, classified in class 424, subclass 159.1. (8th compound) **(Please note if this group is selected further select one compound to be examined on the merits, and amend the claims accordingly, see below for explanation)**

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The inventions are distinct, each from the other because of the following reasons:

Inventions of Groups I-X are mutually exclusive and patentably distinct products and methods which each are structurally and functionally different products and methods and are substantially different. The products are made by different methods, and multiple methods have different uses and delineate different results, and have different effect on interaction, antigenicity and/or immune response. The structures of various kinases, oligonucleotides, activators, inhibitors, or antibodies and their functionalities are different. The examination of all groups would require different searches in the U.S. Patent Shoes and scientific literature and would require the consideration of different patentability issues.

Upon election of any one of Group I or II, III, etc., Applicants are additionally required to elect a single Sequence identified by a specific sequence identification number, a single kinase, a single activator, a single inhibitor, a compound, or an antibody, as indicated above as they apply to group(s). The recited sequences, kinases, activators, antibodies, and/or compounds have different structures one from other and the search for the sequences, kinases, activators, antibodies, and/or compounds would be unduly burdensome. This requirement is not to be construed as a requirement for an election of species, since each of the sequence(s), kinases, activators, antibodies, and/or compounds is/are not a member of a single genus of invention, but constitutes an independent and patentably distinct invention.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. R. Salimi whose telephone number is (703) 305-7136. The examiner can normally be reached on Monday-Friday from 9:00 Am to 6:00 Pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027. The fax phone number for this Group is (703) 305-3014, or (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

A. R. Salimi

3/10/2003


ALI R. SALIMI
PRIMARY EXAMINER